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**Pro hac vice application to be filed*

*Attorneys for Plaintiffs and the
Putative Collective*

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

EDWEENA WASHINGTON and DAPHNE
MOLEFE, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

CIRCLE MEDICAL TECHNOLOGIES,
INC.,

Defendant.

Case No. _____

**COLLECTIVE ACTION COMPLAINT
FOR VIOLATIONS OF THE FAIR
LABOR STANDARDS ACT**

DEMAND FOR JURY TRIAL

Edweena Washington (“Ms. Washington”) and Daphne Molefe (“Ms. Molefe”) (collectively
“Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their

1 attorneys, upon personal knowledge as to themselves and upon information and belief as to other
2 matters, submit the following Complaint against Defendant Circle Medical Technologies, Inc.
3 (“Defendant” or “Circle Medical”), showing the Court as follows:

4 **INTRODUCTION**

5 1. This is a collective action brought by Plaintiffs for unlawful acts committed by
6 Defendant against Plaintiffs and those similarly situated. Plaintiffs bring this action for violations
7 of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (“FLSA”), to obtain full and complete relief
8 for Defendant’s failure to pay Plaintiffs and all others similarly situated for all hours worked and
9 for overtime wages as required by the FLSA.

10 2. Plaintiffs currently work for Defendant as non-exempt employees misclassified by
11 Defendant as independent contractors. Defendant provides telemedicine and in-person medical
12 services in the United States, including the State of California, and Canada. Plaintiffs and all those
13 similarly situated work remotely and/or in Defendant’s in-person provider locations across the
14 United States.

15 3. Defendant employed Plaintiffs and all those similarly situated during the relevant
16 time frame in administrative customer support, prescription, billing, and patient
17 advocate/care/coordinator roles, utilizing different job titles (including, but not limited to PCC I,
18 PCC II, Patient Care Advocate, Patient Care Coordinator, RX Patient Care Advocate/Coordinator,
19 Pharmacy Support Specialist, and Billing Support Advocate/Coordinator) for such positions, any
20 and all of which are collectively referred to herein as “Patient Coordinators.” In these Patient
21 Coordinator positions, Plaintiffs and all those similarly situated provide administrative support
22 services that are integral to Defendant’s telemedicine and/or in-person patient care services.
23 Defendant required Plaintiffs and other similarly situated Patient Coordinators to sign independent
24 contractor agreements, which contain a California choice of law provision. Defendant unlawfully
25 classified Plaintiffs and other similarly situated Patient Coordinators as independent contractors to
26 avoid its obligations to properly pay for overtime, and to reap the benefits of such illegal
27 classification, such as reducing its tax liability and avoiding required workers compensation
28 coverage.

1 4. Defendant paid Plaintiffs and other similarly situated Patient Coordinators on an
2 hourly basis and at the same hourly rate for all recorded hours worked. Defendant further did not
3 permit Plaintiffs and other similarly situated Patient Coordinators to record all time worked and did
4 not maintain records of all time worked for Plaintiffs and other similarly situated Patient
5 Coordinators. In order to fully perform their job duties, Plaintiffs and other similarly situated Patient
6 Coordinators regularly work in excess of forty (40) hours per workweek, but Defendant does not
7 compensate them at the overtime rate for all hours worked in excess of forty (40) hours per
8 workweek.

9 5. Accordingly, Plaintiffs bring this action, pursuant to 29 U.S.C. § 216(b), on behalf
10 of a collective of persons who are and were employed by Defendant as Patient Coordinators (as
11 described above and inclusive of the identified and any other similar job titles), during the past three
12 (3) years through the final date of the disposition of this action who were misclassified as
13 independent contractors and were not paid the statutorily required rate of one-and-one-half (1½)
14 times their hourly rate for all hours worked in excess of forty (40) per workweek and who are entitled
15 to recover: (i) unpaid and incorrectly paid wages for all hours worked in a workweek, as required
16 by law, (ii) unpaid overtime, (iii) liquidated damages, (iv) interest, and (v) attorneys' fees and costs,
17 pursuant to the FLSA and such other and further relief as this Court finds necessary and proper. On
18 information and belief, the collective number of Patient Coordinators exceeds 100.

19 **JURISDICTION, VENUE AND DIVISIONAL ASSIGNMENT**

20 6. This Court has original subject matter jurisdiction over Plaintiffs' FLSA claims
21 pursuant to 28 U.S.C. §1331.

22 7. Venue is proper under 28 U.S.C. § 1391(b) and (c), as a substantial part of the events
23 and omissions giving rise to the claims occurred in this District and Division.

24 **PARTIES**

25 8. Ms. Washington resides in Smyrna, Georgia and submits to the personal jurisdiction
26 of this Court.

27 9. Ms. Molefe resides in Newport News, Virginia and submits to the personal
28 jurisdiction of this Court.

1 10. At all relevant times, in order to perform their job duties for Defendant, Plaintiffs
2 and others similarly situated were required to regularly use the internet and telephone to
3 communicate with Defendant's employees and patients seeking treatment from or treated by
4 Defendant's medical providers and were engaged in interstate commerce.

5 11. Defendant Circle Medical Technologies, Inc. is a Delaware corporation that at all
6 relevant times has been authorized to conduct business in this District, transacts business within this
7 District, and maintains its principal place of business in San Francisco, California in the county of
8 San Francisco. As such, Defendant is subject to the jurisdiction and venue of this Court and may
9 be served with a copy of this Complaint and process by serving George Favvas, its California
10 registered agent and CEO, at 333 1st St., Suite A, San Francisco, CA 94105.

11 12. At all times relevant to this action, Defendant was the "employer" of Plaintiffs and
12 all others similarly situated as those terms are defined by 29 U.S.C. § 203(d).

13 13. The amount of qualifying annual volume of the for-profit business of Defendant
14 exceeds \$500,000. Defendant is engaged in interstate commerce. At all relevant times, Defendant
15 had two or more employees engaged in commerce, as defined by 29 U.S.C. § 203(s)(1)(A).
16 Defendant advertises on the internet, processes credit cards from out-of-state patients, and
17 communicates via mail, text, and telephone with patients, pharmacies, and medical providers in and
18 outside the State of California. For each and all of these reasons, Defendant is subject to the FLSA's
19 requirements.

20 14. Plaintiffs and all others similarly situated Patient Coordinators worked for Defendant
21 within the three years preceding the filing of this action and are individuals who a) signed
22 independent contractor agreements with Defendant, b) provided customer support, prescription,
23 billing, and/or patient advocate/communication/care services in Patient Coordinator roles for
24 Defendant by phone, chat, and/or email from remote work locations; c) worked more than forty
25 (40) hours in a workweek; and d) were paid the same hourly rate for all hours of work performed in
26 a workweek and were not paid overtime compensation for all hours worked over forty (40) in a
27 workweek.

1 15. Plaintiffs consent in writing to being parties to this action pursuant to 29 U.S.C.
2 §216(b) per the Consent to Join forms attached as Exhibit 1.

3 **FACTUAL ALLEGATIONS**

4 16. Ms. Washington applied for a position with Defendant by responding to an internet
5 advertisement. After a virtual video-based interview, Ms. Washington was hired by Defendant,
6 advised that she was required to sign an independent contractor agreement and has been working
7 for Defendant since April 2022. Ms. Washington was informed that her duties “will include but not
8 be limited to tasks pertaining to the patient experience and as directed by the Company’s business
9 needs, including, but not limited to, working evening and weekend hours for a minimum of 40 hours
10 per week.” During her eleven months of employment, Defendant has made clear to Ms. Washington
11 that her status as an “independent contractor” will not change.

12 17. Ms. Washington is paid on an hourly basis at the rate of \$20.00 per hour, receives
13 this same hourly rate of pay for all hours worked, including hours over forty in a workweek, and
14 has no opportunities for profit or loss in the employment relationship. She works more than forty
15 hours per week in most workweeks. For example, during the two-week pay period ending February
16 2, 2023, Ms. Washington was paid for 85.62 hours of work at the \$20.00 per hour rate for all of
17 those hours, instead of being paid at the overtime pay rate for the overtime hours worked. During
18 those same workweeks Ms. Washington also was unable to record time worked off the clock,
19 including, for example, daily time spent logging in to Defendant’s software systems as required
20 before she can clock in, and time worked during meal breaks for which she is required to clock out.

21 18. Ms. Molefe applied for a position with Defendant by responding to an internet
22 advertisement. After a virtual video-based interview, Ms. Molefe was hired by Defendant, advised
23 that she was required to sign an independent contractor agreement and has been working for
24 Defendant since May 2022. Ms. Molefe was informed that her duties “will include but not be limited
25 to tasks pertaining to the patient experience and as directed by the Company’s business needs,
26 including, but not limited to, working evening and weekend hours for a minimum of 40 hours per
27 week.” During her ten months of employment, Defendant has made clear to Ms. Molefe that her
28 status as an “independent contractor” will not change.

1 19. Ms. Molefe is paid on an hourly basis at the rate of \$20.00 per hour, receives this
2 same hourly rate of pay for all hours worked, including hours over forty in a workweek, and has no
3 opportunities for profit or loss in the employment relationship. She works more than forty hours
4 per week in most workweeks. For example, during the two-week pay period ending January 19,
5 2023, Ms. Molefe worked 88.35 hours and was paid at the rate of \$20.00 per hour for all of those
6 hours, instead of being paid at the overtime pay rate for the overtime hours worked. During those
7 same workweeks Ms. Washington was also unable to record time worked off the clock, including,
8 for example, time spent logging in to Defendant's software systems required before she can clock
9 in and time worked during meal breaks for which she is required to clock out.

10 20. On information and belief, other similarly situated Patient Coordinators were also
11 hired to work for Defendant via internet-based applications and interviews, required to sign
12 independent contractor agreements, work more than forty hours a week in most workweeks, are
13 unable to record time worked off the clock, and are/were paid the same hourly rate for all hours
14 worked, including hours over forty (40) in a workweek during the relevant time period. On
15 information and belief, Defendant also employs others in Patient Coordinator roles to perform the
16 same work as Plaintiffs and others similarly situated who are classified as W-2 non-exempt
17 employees.

18 21. Defendant misclassified Plaintiffs and other similarly situated Patient Coordinators
19 as independent contractors although they are non-exempt employees within the meaning of the
20 FLSA in order to avoid required compliance with the FLSA and related laws.

21 22. At all relevant times Defendant exercises control over Plaintiffs and each of the
22 similarly situated Patient Coordinators, had knowledge of their hours worked, and/or suffered and
23 permitted them to work for Defendant.

24 23. Plaintiffs and other similarly situated Patient Coordinators are not free from
25 Defendant's control in the performance of their work. For example, Defendant requires Plaintiffs
26 and each of the similarly situated Patient Coordinators to work set schedules, make requests for time
27 off that are approved or rejected by their supervisors, meet daily production standards and quotas,
28 participate in daily or weekly "huddles" with management and other employees to discuss

1 Defendant's requirements, report to supervisors, and have regularly scheduled performance
2 discussions and evaluations with Defendant's supervisors. Defendant controls the manner in which
3 Plaintiffs and other Patient Coordinators perform all of their work.

4 24. Plaintiffs and other similarly situated Patient Coordinators are required to download
5 and utilize Defendant's software systems, are subject to monitoring and tracking by Defendant that
6 measures metrics such as their average call numbers and is visible to teams and supervisors, are
7 subject to quality assurance evaluations that provide correction and feedback, receive reminders
8 throughout their shifts of performance goals and requirements, must meet minimum weekly
9 averages, are required to participate in frequent training sessions, must strictly comply with
10 Defendant's instructions and processes including scripts that dictate responses to be used during
11 communications, receive directions via Slack regarding changes in procedures, and regularly have
12 one-on-one meetings with their supervisors regarding performance and identifying areas of
13 performance improvement needed. Defendant uses the software metrics and tracking to have verbal
14 counseling sessions with Patient Coordinators and warns them that failure to meet Defendant's
15 performance metrics may be grounds for "termination" of their "contracts."

16 25. Plaintiffs and others similarly situated do not perform work that is outside the usual
17 course of Defendant's business. Plaintiffs and other similarly situated Patient Coordinators
18 performed the same or materially similar work as Defendant's employees who were not required to
19 sign independent contractor agreements and were held to the same conditions, standards, policies,
20 and workflow requirements as Defendant's employees. Plaintiffs and other similarly situated
21 Patient Coordinators were required to download and utilize Defendant's software for their daily
22 work and were provided "Employee ID" numbers to use when accessing Defendant's HR-related
23 and business software programs.

24 26. Plaintiffs and others similarly situated are not customarily engaged in an
25 independently established trade, occupation or business of the same nature as the work performed
26 for defendant.

27 27. Plaintiffs and other similarly situated Patient Coordinators were required to complete
28 pre- and post-shift work and work during meal periods off-the-clock. Defendant also requires

1 Plaintiffs and other similarly situated Patient Coordinators to clock out for a 30-minute meal period
2 regardless of whether work was required during that period or less than thirty minutes of non-work
3 time were provided.

4 28. At all relevant times, Defendant failed to maintain accurate records of Plaintiffs' and
5 other similarly situated Patient Coordinators' actual work hours in violation of the FLSA's
6 recordkeeping requirements.

7 29. During the applicable FLSA statutory periods, Plaintiffs and other similarly situated
8 Patient Coordinators routinely worked in excess of forty (40) hours in a workweek without receiving
9 overtime compensation for overtime hours worked.

10 30. Defendant knew or should have known that Plaintiffs and other similarly situated
11 Patient Coordinators were misclassified as independent contractors and were not properly paid for
12 all hours worked and/or overtime hours worked within the meaning of the FLSA. As such,
13 Defendant willfully engaged in a pattern of violating the FLSA as described in this Collective Action
14 Complaint in multiple ways, including, but not limited to misclassification, failing to pay at least
15 the minimum wage for all hours worked in some workweeks, and failing to pay overtime
16 compensation, and Defendant's conduct constitutes a willful violation of the FLSA within the
17 meaning of 29 U.S.C. § 255.

18 31. As a result of Defendant's unlawful conduct, Plaintiffs and other similarly situated
19 Patient Coordinators have been deprived of wages earned and suffered damages in an amount to be
20 determined at trial and are entitled to recover such amounts, liquidated damages, pre- and post-
21 judgment interest, attorneys' fees, and costs.

22 32. At all relevant times, Plaintiffs and similarly situated Patient Coordinators were
23 misclassified as independent contractors instead of being properly paid as non-exempt employees,
24 had substantially similar job duties, and were subject to Defendant's decision, policy, plan,
25 programs, practices, procedures, protocols, and rules of knowingly and purposefully refusing to pay
26 them overtime (i.e., time and one-half their regular hourly rates of pay) for all hours worked over
27 40 in a week.

1 33. At all relevant times, Plaintiffs and similarly situated Patient Coordinators
2 consistently worked more than 40 hours in a week, performed work for Defendant off the clock, and
3 were not paid at overtime rates for all hours worked over forty (40) in a workweek. As such, there
4 are questions of law or fact common to Plaintiffs and similarly situated Patient Coordinators,
5 Plaintiffs will fairly and adequately protect the interests of similarly situated Patient Coordinators,
6 and a collective action is superior to other available methods for the fair and efficient adjudication
7 of the controversy.

8 34. Without judicial resolution of the claims asserted on behalf of the proposed collective
9 group, Defendant's continued violations of the FLSA will undoubtedly continue. Members of the
10 collective group of similarly situated Patient Coordinators are readily ascertainable. For purposes
11 of notice and other purposes in this action, their names and contact information are available from
12 Defendant, and notice can be provided to each via electronic mail to personal and/or work email
13 addresses on file, via text message, and/or U.S. Mail.

14 35. At all relevant times, Plaintiffs and similarly situated Patient Coordinators were
15 misclassified as independent contractors by Defendant for the purpose of knowingly and
16 purposefully refusing to pay them overtime (i.e., time and one-half their regular hourly rates of pay)
17 for all hours worked over 40 in a week.

18 **COUNT ONE – FAILURE TO PAY OVERTIME COMPENSATION**

19 36. At all relevant times, Plaintiffs and similarly situated Patient Coordinators were
20 employed by Defendant, regularly and/or consistently worked more than 40 hours in a workweek,
21 and further performed work off the clock.

22 37. At all relevant times, Plaintiffs and similarly situated Patient Coordinators were not
23 paid overtime for all hours worked over 40 in a week or for time worked off the clock. Defendant
24 knew and/or suffered and permitted Plaintiffs and similarly situated Patient Coordinators to work in
25 excess of forty (40) hours in a workweek and knew Plaintiffs and other similarly situated Patient
26 Coordinators were not being paid overtime compensation required by the FLSA.

1 Respectfully submitted, this 27th day of March 2023.

2 /s/ Justin M. Scott

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